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August 9, 2005

VIA ECFS AND E-MAIL

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

Subject: CC Docket No. 96-128
Ex Parte Filing by Northwest Public Communications Council re Petitions of
Illinois Public Telecommunications Association et al.

Dear Secretary Dortch:

The Northwest Public Communications Council ("NPCC") is a trade association representing the interests of payphone service providers ("PSPs") in Oregon, Washington, Idaho, and Montana. The NPCC files this ex parte letter regarding the petitions filed by Illinois Public Telecommunications Association ("IPTA") (July 30, 2004), the Independent Payphone Association of New York ("IPANY") (December 24, 2004), and the Southern Public Communications Association ("SPCA") (November 9, 2004) (hereafter, "Petitions"). The Petitions seek enforcement of the Commission's orders in this docket regarding the charges for network services provided to payphone service providers ("PSPs") pursuant to 47 U.S.C. §§ 201, 202, and 276.

The NPCC filed comments on August 26, 2004, and January 18, 2005, in support of the Petitions.¹ As the NPCC noted in its January comments, the states involved in the three pending Petitions for a declaratory ruling by this Commission are not unique. In its January comments, the NPCC explained how Qwest—like Verizon, Bell South, and SBC Ameritech—delayed proper implementation of the FCC's orders regarding payphone access line rates for many years. Moreover, like the other three RBOCs, Qwest has refused to provide refunds the FCC has ordered for those years of overcharges. NPCC January Comments at 6.

The purpose of this letter is to call to the attention of the Commission that the need for FCC guidance in this docket has become even greater in Oregon since the NPCC filed

¹ The NPCC filed joint comments with the Colorado Payphone Association and the Minnesota Payphone Association.

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its comments in January. Although NPCC was actively pursuing Qwest's refund obligations before the Oregon Public Utilities Commission ("PUC" or "OPUC"), the PUC has decided to suspend action on NPCC's refund complaint pending FCC action on the Petitions in this docket. Attached are two orders of the Oregon PUC: Ruling, Disposition: Proceeding held in abeyance, *The Northwest Public Comm's Council v. Qwest Corp.* (Dkt. DR 26/UC 600, March 23, 2004); and Order, Disposition: ALJ Ruling Affirmed, *The Northwest Public Comm's Council v. Qwest Corp.*, Order No. 05-208 (Dkt. DR 26/UC 600, May 3, 2005).

In Order No. 05-208, the Oregon PUC affirmed the ALJ Ruling holding the NPCC's refund complaint case in abeyance pending the outcome of the FCC's rulings on the Petitions to, "provide the FCC an opportunity to fashion a comprehensive solution to the issues in a manner consistent with the requirements set forth in its *payphone orders*." *Id.* at 3. Although the OPUC clearly desires guidance from the FCC, the PUC decided not to make its own filing with the Commission, preferring instead just to wait. *Id.*

NPCC's case in Oregon, which NPCC outlined in comments filed on January 18, 2005, in this docket is factually very similar to the petition of IPTA. Like the IPTA, NPCC was in continuous litigation with Qwest from the time Qwest was to have complied with the new services test for pricing its payphone access lines in early 1997. Qwest ultimately lost that litigation in November 2004, when the Oregon court of appeals found that Qwest's filings with the OPUC in early 1997 did not comply with the FCC's *Payphone Orders*. See *Northwest Public Comm's Council v. PUC*, 100 P3d 776 (Or. App. 2004). As a result of OPUC's November 2004 ruling, Qwest must now set its payphone access line rates to substantially less than half what it was charging NPCC members on and for years after April 15, 1997. Yet, in spite of Qwest's failed attempts to dodge the Commission's *Payphone Orders*, Qwest nevertheless refuses to pay the refunds for the six years it overcharged NPCC's members in violation of the Commission's *Payphone Orders*.

While the facts of NPCC's situation in Oregon are very similar to those outlined in the IPTA petition, procedurally NPCC's case is different from that of IPTA² because there is no final state decision in Oregon on refunds. Therefore, at this time, NPCC has not filed a petition for a declaratory ruling with the FCC, because there is no final action of the OPUC.. Rather, the OPUC is awaiting guidance and clarification from the FCC. Likewise, the NPCC desires FCC guidance. NPCC's concern, however, is that its ability to pursue its claims will be unduly delayed. Indeed, it has now been more than a year since the IPTA petition was filed with the FCC. Likewise, although the OPUC has deferred to the FCC for the time being, the OPUC is also concerned about undue delay in concluding its docket:

² As well as from the procedural posture of IPANY and SPCA.

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In reaching this decision, we note that the ALJ's decision does not postpone this matter indefinitely. The ruling allows the parties to move to reopen the proceeding if circumstances arise warranting such action. To ensure there is no undue delay, the parties may ask the Commission to revisit this matter if the FCC has not acted by the end of this year.

Order No. 05-208 at 3 (emphasis added).

The NPCC urges the FCC to act with all reasonable speed on the IPTA and related Petitions, as the Oregon PUC is awaiting FCC guidance through the end of this year.

Very truly yours,



Brooks E. Harlow

cc: Mr. Thomas Navin (thomas.navin@fcc.gov)
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Mr. Jon Stover (jon.stover@fcc.gov)

Attachments: 2

HARLOW:cm
File No.: 503530/0048
Doc ID: SEADOCS:206840.1